

SENATE RECORD VOTE ANALYSIS

105th Congress
2nd Session

Vote No. 303

October 7, 1998, Noon
Page S-11656 Temp. Record

INTERNET TAX FREEDOM ACT/No Tax Break For Giving Minors Porn Access

SUBJECT: Internet Tax Freedom Act . . . S. 442. Coats modified amendment No. 3695.

ACTION: AMENDMENT AGREED TO, 98-1

SYNOPSIS: The Finance Committee substitute to S. 442 (both the Commerce Committee and the Finance Committee reported versions of the bill), will impose a 2-year moratorium beginning July 29, 1998 on certain State and local taxation of online services and electronic commerce (the Commerce Committee substitute would impose a 6-year moratorium), and will establish an advisory commission on electronic commerce to study the issue and make recommendations during that moratorium.

The Coats modified amendment would exempt from the moratorium on Internet taxation any person or entity who in interstate or foreign commerce was knowingly engaged in the business of selling or transferring, by means of the World Wide Web, material that was harmful to minors unless such person or entity required the use of a verified credit card, debit account, adult access code, or such other procedures as the Federal Communications Commission prescribed, in order to restrict access to such material by individuals under the age of 17. Internet service providers, telecommunications carriers, and other individuals and entities that provided Internet services for other people's communications without selecting or altering those communications would not be covered by this exemption from the moratorium. The amendment would use the Supreme Court definition for "harmful to minors" that was given in the *Ginsberg* decision. As amended, Internet access providers who did not provide screening software that would block access to pornographic sites, either free or at a cost, at the time that they made sales to customers, would also be exempt from this bill's moratorium on taxation.

Those favoring the amendment contended:

A few years ago Congress passed the Communications Decency Act in an effort to protect children from the obscenity that is

(See other side)

| YEAS (98) | | | | NAYS (1) | | NOT VOTING (1) | |
|----------------------------|---------------|--------------------------|---------------|--------------------------|------------------------|--------------------|--------------------|
| Republican (55 or 100%) | | Democrats (43 or 98%) | | Republicans (0 or 0%) | Democrats (1 or 2%) | Republicans (0) | Democrats (1) |
| Abraham | Inhofe | Akaka | Johnson | | Leahy | | Glenn ² |
| Allard | Jeffords | Baucus | Kennedy | | | | |
| Ashcroft | Kempthorne | Biden | Kerrey | | | | |
| Bennett | Kyl | Bingaman | Kerry | | | | |
| Bond | Lott | Boxer | Kohl | | | | |
| Brownback | Lugar | Breaux | Landrieu | | | | |
| Burns | Mack | Bryan | Lautenberg | | | | |
| Campbell | McCain | Bumpers | Levin | | | | |
| Chafee | McConnell | Byrd | Lieberman | | | | |
| Coats | Murkowski | Cleland | Mikulski | | | | |
| Cochran | Nickles | Conrad | Moseley-Braun | | | | |
| Collins | Roberts | Daschle | Moynihan | | | | |
| Coverdell | Roth | Dodd | Murray | | | | |
| Craig | Santorum | Dorgan | Reed | | | | |
| D'Amato | Sessions | Durbin | Reid | | | | |
| DeWine | Shelby | Feingold | Robb | | | | |
| Domenici | Smith, Bob | Feinstein | Rockefeller | | | | |
| Enzi | Smith, Gordon | Ford | Sarbanes | | | | |
| Faircloth | Snowe | Graham | Torricelli | | | | |
| Frist | Specter | Harkin | Wellstone | | | | |
| Gorton | Stevens | Hollings | Wyden | | | | |
| Gramm | Thomas | Inouye | | | | | |
| Grams | Thompson | | | | | | |
| Grassley | Thurmond | | | | | | |
| Gregg | Warner | | | | | | |
| Hagel | | | | | | | |
| Hatch | | | | | | | |
| Helms | | | | | | | |
| Hutchinson | | | | | | | |
| Hutchison | | | | | | | |

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

Compiled and written by the staff of the Republican Policy Committee—Larry E. Craig, Chairman

polluting the Internet. Congress overwhelmingly favored that Act; the President signed it; the American people supported it. Unfortunately, the current Justices on the Supreme Court struck it down as unconstitutional. They gave two excuses. First, they said that we could only apply the restriction to commercial providers. In other words, perverts who wish at their own expense to expose children to any manner of filth cannot be stopped. Second, they said the standard that we wrote in that bill of indecency was too broad, and suggested that the next time we pass legislation we use their narrower definition.

Though we strongly disagree with the Court's action in striking down the Communications Decency Act, we have drafted this amendment to meet the two objections that it gave. First, the amendment would only apply to commerce. Commercial pornographers who did not use commonly available means of restricting access to children under 17 (the Supreme Court, in its "wisdom," only counts minors under 17 as children when the issue is pornography) would not get a tax exemption, and commercial Internet access providers who at a minimum did not offer to sell their customers screening devices that would block access to offensive material would not get a tax exemption. Second, the amendment would use the Court's definition for material that is "harmful to minors." Our hope is that the Court will uphold this amendment, which meets its previous objections, instead of looking for a new excuse to say it is unconstitutional.

The Internet has become the largest distributor of depravity in the world. According to Wired Magazine, there are 28,000 web sites worldwide that have soft- or hard-core pornography on them, and 50 such new sites appear each day. Any child who types in the word "toy," or "nurse," or "animal," or even his or her own last name on a browser may get a hit list that contains any number of obscene sites, many with grotesquely graphic images. Children (and adults for that matter) do not need to go looking for pornography on the Internet--it is unavoidable. Even the sites that ostensibly block access to minors have "teasers" that anyone can view, and those teasers often show horrendous images, including sadistic sexual abuse of women, perverse sex acts, bestiality, and abuse of children and infants. If anyone were to take such images and plaster them on signs around a town for anyone to see, no one would question whether that person could be arrested. If that same person makes those same images available to any young child who may stumble across them while browsing the Internet in their own home, then some people think it is just a matter of free speech. We emphatically do not. We strongly urge our colleagues to accept this amendment.

While favoring the amendment, some Senators expressed the following reservations:

We are not sure whether this amendment will be found constitutional, but that will have to be a matter for the courts to decide. Also, we are not sure how effective or advisable it is to try to enact restrictions. The most effective limit on Internet pornography is the basic decency of most Americans who just do not want to view it and will not view it. If that basic decency is lost, then no amount of restrictions will do any good. To stop children from being exposed to pornography online we think we need to get parents more involved. We do not think that most parents understand the scope of the problem. A public awareness campaign would probably do much more good than this amendment. Still, the restrictions in this amendment are simple, common-sense measures that will provide a measure of help. On that basis, we support this amendment.

No arguments were expressed in opposition to the amendment.